

# **Exhibit “19”**

**COPY**

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

JANICE McCOLLUM,

Plaintiff,

Vs.

CIVIL ACTION NO.  
05-cv-0326-W

Amtren, Inc.,

Defendant.

\* \* \* \* \*

DEPOSITION OF KIRK LAMBERTH, taken  
pursuant to stipulation and agreement before  
Patricia G. Starkie, Registered Diplomate Reporter,  
CRR, and Commissioner for the State of Alabama at  
Large, in the Law Offices of Slaten & O'Connor, 105  
Tallapoosa Street, Montgomery, Alabama, on  
Wednesday, November 15, 2006, commencing at  
approximately 10:05 a.m.

\* \* \* \* \*

APPEARANCES

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ALSO PRESENT:

Ms. McCollum

\* \* \* \* \*

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STIPULATION

It is hereby stipulated and agreed by and  
between counsel representing the parties that the  
deposition of:

KIRK LAMBERTH

is taken pursuant to the Federal Rules of Civil

1 Q. That's my home town, so I have a little  
2 familiarity with that plant and what they  
3 did years ago. I thought it had to do with  
4 manufacture of tape.

5 What is your position with Amtren?

6 A. I am the president.

7 Q. Okay. Is Amtren a public corporation?

8 A. No, it is not.

9 Q. All right. Are you the sole owner?

10 A. Yes.

11 Q. When was the company begun?

12 A. Amtren Corporation was -- the company was  
13 incorporated in 1995. There was a  
14 three-year period where we were another  
15 entity. So 1992 was when I founded the  
16 basic company. From 1992 to 1995 we  
17 operated under another company name because  
18 we were on a different path. In 1995 we  
19 changed direction, and basically we  
20 separated the two -- there were two groups  
21 at that time, and we separated them, and I  
22 took product development. The name Amtren  
23 was developed and we incorporated in

1           October of -- I believe it was in '95 as  
2           Amtren.

3           Q.   All right.  So Amtren as a business entity  
4           came into being in 1995?

5           A.   1995, correct.

6           Q.   Okay.  And it grew out of another entity --

7           A.   It did.

8           Q.   -- that was prior to that?

9           A.   It did.

10          Q.   Does that other entity still function?

11          A.   No, it does not.

12          Q.   Could you tell me what Amtren does.

13          A.   Amtren is classified as a manufacturer in  
14          that we manufacture CD and DVD duplication  
15          systems.

16          Q.   Okay.  And I'm going to try to explain that  
17          to you, and if you would, tell me if I  
18          understand it.

19          A.   All right.

20          Q.   You would manufacture machines that would  
21          make multiple copies of an original, either  
22          data or music or whatever?

23          A.   Yes.  It is -- that's exactly right.  The

1           exception is you can also take straight  
2           from your PC the information. So you can  
3           bring an original work into the machine  
4           like a xerox -- like a photocopy, and you  
5           can also submit work to it from your PC.

6       Q.    If a friend of mine recorded a CD or what  
7           we used to call an album and had a master,  
8           then you would manufacture machines that  
9           could reproduce that, the copies that could  
10          be sold?

11     A.    Right.

12     Q.    Is that right?

13     A.    That is exactly right.

14     Q.    Okay. That's what I thought it was, but I  
15          wanted to be sure.

16               What raw inputs are necessary for  
17          Amtren to operate?

18     A.    Raw inputs would be -- there would be --  
19          depending on the area, of course, there  
20          would be --

21               And let me clarify raw. You mean like  
22          reporting, weekly reporting, this kind  
23          of -- you mean --

1 Q. No. Really, what I mean is what sort of  
2 supplies -- or perhaps you could just  
3 describe suppliers that you would have to  
4 have in order to --

5 A. Can I say materials?

6 Q. Yes.

7 A. Do you mean materials?

8 Q. Materials, yeah.

9 A. All right. Materials are provided -- and  
10 there are probably three categories of  
11 materials. The materials are purchased  
12 parts, which would be items that are  
13 specified from, you know, certain vendors  
14 and purchased.

15 Then there would be parts that would be  
16 built from vendors to our specifications.  
17 Those could be sheet metal or plastic,  
18 molded parts.

19 The third is usually PC boards and  
20 those type. Those are also designed and  
21 built to our specifications and populated.

22 Q. And what was the last thing you said?

23 A. That's pretty much it.



1 Q. What kind of board?

2 A. The PC -- the circuit boards.

3 Q. Okay. I'm sorry.

4 A. Circuit boards, the internal controllers.

5 Q. Okay. Are there any soft materials that  
6 you have to have in order to produce your  
7 product?

8 A. Can you explain soft, make sure --

9 Q. Yes. I was hoping that that would explain  
10 it. Are there any processes or software  
11 that you would have to purchase or lease or  
12 whatever in addition to raw materials?

13 A. For the product itself?

14 Q. Yes.

15 A. Primarily for the product?

16 Q. For you to produce the product that you  
17 then sell.

18 A. Two things I want to clarify. We actually  
19 purchase software as a material for our  
20 product.

21 Q. Okay.

22 A. That's different. We don't -- we just --  
23 if I can, it's XP, Windows XP. It goes

1 with our systems. There's an option to  
2 provide -- that we provide the operating  
3 system. That's a material.

4 Now, is that related -- are you  
5 asking -- or software related to  
6 running the app?

7 Q. Yes. Is there any software that you have  
8 to have or other processes that you have to  
9 lease or license in order to produce what  
10 you produce? And I would assume Windows XP  
11 would be one of those things, because you  
12 put it in the machine.

13 A. Right.

14 Q. As a raw material.

15 A. Not have to, but, yes, we do -- we do elect  
16 to use certain packages to -- and I guess  
17 it's probably because it's more required  
18 for business operations than anything  
19 else. So we do, you know, use a couple --  
20 primarily we use I would say probably a  
21 couple of packages. Couple of them are the  
22 Microsoft Office type packages, and the  
23 other would be an accounting package.

1 Q. And we're going to talk I'm sure this  
2 morning some about Peachtree and the  
3 MAS90. And I'm not sure that's how y'all  
4 pronounce it, but that's --

5 A. Well, that's right. Those two are the way  
6 we refer to those.

7 Q. Over on the production side, it would be  
8 the Microsoft Office type application?

9 A. Exactly.

10 Q. And then I would assume for your internal  
11 business operations, you're also using  
12 something like Microsoft Office or  
13 Enterprise or something of that nature?

14 A. Generally Office, just the Excel and Word  
15 documents within Office.

16 Q. Okay. What is your -- taking '95 as a  
17 baseline, what has been your rate of growth  
18 in production?

19 A. Dollars or volume?

20 Q. Either one.

21 A. I'll have to think a minute about that. I  
22 can say it's been substantial. For a  
23 period -- if I can just use a couple of

1 periods here. From '95 through '98,  
2 minimal growth.

3 Q. Okay.

4 A. '98 to 2001, significant, you know, sharp  
5 growth. So from '98 to 2001, it was  
6 substantial growth, a lot more than before.

7 Q. Are you talking about 25 percent a year or  
8 more growth?

9 A. Let me think just a minute. So I've got --  
10 Not quite that sharp during those periods.  
11 Cumulative yes, probably for that period.  
12 Cumulative. Probably from '98 to '01, it  
13 probably could be 25 percent; maybe as much  
14 as 35 percent.

15 Q. Okay.

16 A. Maybe on an annual basis, that would be ten  
17 or so, 15.

18 From '02 to the current, we've had  
19 substantial growth.

20 Q. Better than 50 percent?

21 A. Probably 25 per year.

22 Q. Okay.

23 A. I'm not sure how that relates totally.

1 Now, we slowed down a little bit in the  
2 last two years, though, so I would say that  
3 you probably are talking about 30 to 40  
4 percent growth per year.

5 Then in 2005, we slowed down  
6 substantially, and we've -- so the end of  
7 2005 is probably flat compared to previous  
8 years. 2006 is picking back up some.

9 Q. Was there any external cause of that 2005  
10 slow down, something in the industry?

11 A. It was primarily the -- there were a couple  
12 of reasons. The most significant was  
13 delayed release of a planned product.

14 We had planned a product release for  
15 2004 and 2005. It was delayed. This delay  
16 caused that.

17 Q. Was there any particular cause for the  
18 delay?

19 A. No single cause.

20 Q. Okay. Were there more than three causes?

21 A. Yes. There -- to try to clarify that.  
22 When you release a new product -- we have  
23 not released a new product since 2001.

1       There were a lot of areas that we had  
2       planned well to do that were not executed.

3       There are probably three categories. A  
4       couple that I would mention would be the  
5       proper execution of material changeover.  
6       You have an old model to a new model. So  
7       you have to plan the materials that will  
8       not be used from the old model to be --  
9       reduce the inventory. Then you have to  
10      plan the materials for the new model, and  
11      you have a changeover plan. That's kind of  
12      an operational mode.

13      Then the other item is the design, that  
14      the designers do, our R&D people. So a  
15      secondary item that relates to this is that  
16      when you release a new revision, some of  
17      the designs are not fully complete, so it  
18      takes additional time to work out some of  
19      the -- I may call them bugs. It's not  
20      software only, but it's sometimes the  
21      hardware doesn't fit right. So I would say  
22      it's probably a combination of the two  
23      items.

1 Q. Okay. Has that product now been released?

2 A. Yes, it has.

3 Q. And you are back on track with the  
4 substantial growth?

5 A. Yes, we are. This year we would -- the  
6 product was formally released last  
7 November. That would be -- let's see.  
8 We're in '06, so that would be November of  
9 '05. And it is -- I would say it's --  
10 we've experienced 30 to 40 percent growth  
11 in that product this year.

12 Q. How many people are employed by Amtren?

13 A. I was going to count them this morning. I  
14 forgot. I don't know the whole number.

15 MR. TRAWICK: Are you asking  
16 today?

17 A. Today?

18 Q. I was asking generally today, but we can go  
19 back specifically.

20 A. Can I use a rough number?

21 Q. Sure.

22 A. I think it's about 20. I'm not...

23 Q. And is that more or less than when Janice

1 was employed there, that 20?

2 A. I think it's less, but I'd have to verify  
3 that. I can't remember exactly the  
4 number. Now, I am using full time, but on  
5 occasion we do use contractors or  
6 temporary. And that's what -- your  
7 question --

8 Q. Was to full-time employees.

9 A. Right.

10 Q. In breaking down that roughly 20 -- and I'm  
11 not going to hold you to that number --  
12 about how many are engineers?

13 A. Twenty-five percent roughly. I think four  
14 operate in that department completely, so  
15 it would be a little less than 25.

16 Q. Are the engineers responsible for inventory  
17 control and production?

18 A. Not responsible for it.

19 Q. Okay. How many people would be involved in  
20 inventory control?

21 A. One person.

22 Q. One person?

23 A. Yes.



1 Q. Purchasing?

2 A. Purchasing, same person.

3 Q. Same person?

4 A. Yes.

5 Q. Do you have a separate shipping department?

6 A. We do not have a shipping department. It's  
7 usually a shared duty.

8 Q. Okay. Would the person who also does  
9 inventory and purchasing do shipping as  
10 well?

11 A. Yes.

12 Q. Who else would be involved in shipping by  
13 position or title, not by name?

14 A. What happens now is generally we pull from  
15 the management staff when we need it for  
16 that. If there's a shipment going out,  
17 generally there's -- including myself, if  
18 needed, and others will just assist with  
19 the shipping of the product.

20 The primary person that's mentioned,  
21 the inventory and logistics person,  
22 prepares the shipment as far as they can,  
23 and then we have additional people that

1 will help with the finalization of it.

2 It's not assigned specifically. It's  
3 usually as we can -- you know, as we can  
4 find people.

5 Q. What is your primary product now that you  
6 sell?

7 A. It's the CD and DVD duplicator.

8 Q. Since I have never seen one of those, is  
9 that larger than a kitchen microwave?

10 A. Yes. There's three levels of the product.  
11 One is the level that is under two  
12 thousand. It would probably be smaller  
13 than that. It would be similar to -- maybe  
14 similar to a microwave.

15 Q. Okay.

16 A. Then the levels -- two levels above that  
17 are substantially larger. They would be  
18 similar to your office copier without the  
19 stand. They would be 45 to 50 pounds.

20 Q. And you have a staff that actually  
21 manufactures those?

22 A. Yes, we do.

23 Q. How many people are involved in

1 manufacture?

2 A. Let me count, because I want to try -- I'm  
3 not going -- again, I'm going to use a  
4 number that I just -- I think it's going to  
5 be six or seven.

6 Q. Okay. Now, do the engineers do any of the  
7 manufacturing work?

8 A. Their responsibility does not do that, but  
9 they do assist from time to time.

10 Q. Okay. And to sort of get a picture in my  
11 head, once a unit is produced, I would  
12 assume it's boxed somehow, and your  
13 manufacturing people would do that and move  
14 it to some location to be sold?

15 A. We have an assembly line process. At the  
16 end of the line it's quality checked, and  
17 then it goes into a carton and is closed  
18 up, yes.

19 Q. How many people are currently involved in  
20 management with Amtren?

21 A. Currently? Five. Let me count...

22 MR. TRAWICK: To keep from  
23 confusing the court reporter,

1 if you verbalize your  
2 thoughts, she takes it down.

3 THE WITNESS: Sorry about that.

4 My apologies.

5 A. I'm going to say five.

6 Q. Okay. And I'm assuming that you are one of  
7 those?

8 A. Yes, that's correct.

9 Q. You are the president and CEO?

10 A. That's correct.

11 Q. Who are the other four?

12 A. By name, Bobby Lake, Susan Seeber, Derrick  
13 Garrett --

14 Q. Derrick?

15 A. D-E-R-R-I-C-K, Garrett, G-A-R-R-E-T-T, and  
16 Michael Rogers.

17 Q. What is Bobby Lake's title?

18 A. His title is general manager. There's a  
19 secondary title with that, too, controller.

20 Q. Is Susan Seeber --

21 A. Seeber.

22 Q. Seeber?

23 A. Yes, uh-huh (positive response).

1 Q. What's her title?

2 A. Accounting manager.

3 Let me clarify that. It's accounting  
4 and business management.

5 Q. And Derrick Garrett?

6 A. Service manager.

7 Q. And Michael Rogers?

8 A. He's the logistics and inventory manager.

9 Q. Is he that person that we were talking  
10 about that would purchase and --

11 A. Exactly.

12 Q. -- do inventory control and so on?

13 A. Yes.

14 Q. Okay. And typically service manager to me  
15 means something in a retail setting, but  
16 what does your service manager do?

17 A. Our service manager receives calls from the  
18 customer. He manages a small group,  
19 there's only two in it, but they're the  
20 calls that come in from the customer with  
21 issues regarding the systems.

22 Q. Okay.

23 A. Questions that -- you know, it's service

1 calls similar to if you would call a  
2 manufacturer for help with a product.

3 Q. And the accounting manager?

4 A. Susan?

5 Q. Yes.

6 A. What was your question?

7 Q. What specifically does she do?

8 A. Susan is responsible for the accounts  
9 payable, the accounts receivable, the  
10 basically matching the purchase orders with  
11 the packing lists. I would say primarily  
12 any accounting duty up and to the  
13 production of -- in fact, I guess all  
14 accounting areas. She also manages the  
15 front office, too, anybody in the front  
16 office.

17 Q. Okay. Does she do like monthly income  
18 statements?

19 A. Yes, she does.

20 Q. Financial statements for the end of the  
21 year?

22 A. Yes, she does. Those are nonaudited, just  
23 output type reports. And she does,

1 actually, some of them weekly.

2 Q. Okay. Is she also responsible for writing  
3 checks?

4 A. Yes, she is.

5 Q. Making payments to Blue Cross Blue Shield?

6 A. Yes, she is.

7 Q. And tax payments?

8 A. Yes, she is.

9 Q. Is she a CPA?

10 A. No, she is not.

11 Q. To try to shorten things a little bit, I'm  
12 going to say I think the general manager is  
13 responsible for everything; is that right?

14 A. The general manager in the role is -- yes,  
15 operations and -- I call it the front  
16 office, if you will. It would be the  
17 service and the purchasing and the  
18 accounting areas, yes.

19 Q. Okay.

20 A. I think that's correct.

21 Q. And how is that role different from that of  
22 controller?

23 A. The controller title in Mr. Lake's

1 situation is because he is the CPA, and he  
2 does review our accounting output; thus,  
3 the title is, if you will, a co-title to  
4 allow that role to be a double check for  
5 the accounting system.

6 Q. Okay. When was Bobby Lake employed as  
7 general manager and/or controller?

8 A. I believe the dates are somewhere -- we can  
9 verify this. It would be January or  
10 February of this year. We can verify the  
11 exact date if you want to. I do know it  
12 was the beginning of this year.

13 Q. Okay. How about Susan Seeber?

14 A. I believe her role -- it would be in the  
15 fall of last year. It would be somewhere  
16 around October -- again -- September,  
17 October, I believe.

18 Q. Was Susan Seeber hired into the position of  
19 accounting manager or --

20 A. Yes, she was.

21 Q. Okay. And I want to ask the same question  
22 about Bobby Lake. Was he hired as general  
23 manager or did he have some other position



1 before that?

2 A. No, he was hired in as general manager.

3 Q. Okay. What about Derrick Garrett? How  
4 long has he been with you?

5 A. Again, I'm going to estimate 2003. Late  
6 2003, early 2004.

7 Q. And Michael Rogers?

8 A. Spring of 2006. Exact month, I would  
9 estimate May.

10 Q. Who did Mr. Rogers replace?

11 A. At the time of his employment?

12 Q. Yes.

13 A. Wayne Crabtree.

14 Q. And who did Derrick Garrett replace?

15 A. The position did not -- it's a growth  
16 position. It did not exist.

17 Q. New position?

18 A. Yes.

19 Q. And whom did Susan Seeber replace?

20 A. Lisa McNamee.

21 Q. And Bobby Lake?

22 A. New position.

23 Q. Do you recall the date that Janice McCollum

1 was initially employed?

2 A. The dates of her employment?

3 Q. Yes.

4 A. January of 2004 through April of 2005.

5 Q. Okay. Who was responsible for hiring her?

6 A. I was.

7 (Plaintiff's Exhibit 1 was marked  
8 for identification.)

9 Q. If you would look at -- I'll represent to  
10 you this is Amtren's responses to  
11 Ms. McCollum's discovery requests. Have  
12 you ever signed a copy of this?

13 MR. TRAWICK: Yes.

14 A. Yes.

15 MR. TRAWICK: We can get you a  
16 signed copy.

17 MR. JACOBS: I'm not sure that I  
18 have one.

19 MR. TRAWICK: My recollection is  
20 we sent this to you and told  
21 you we would supplement with a  
22 signed copy.

23 MR. JACOBS: That you would get a

1 Q. And I note in the response that she got a  
2 \$10,000 bonus.

3 A. Uh-huh (positive response).

4 Q. And what I'm trying to find out, what I'm  
5 trying to ask and not doing it very well, I  
6 suppose, is was her bonus set up according  
7 to some formula as a percentage of sales  
8 or -- how was it arrived at?

9 A. The bonus is a merit bonus, and it's -- the  
10 bonus that you're discussing --

11 If it's the \$10,000 bonus, then I can  
12 explain a little bit.

13 Q. Right.

14 A. That's a merit bonus. At the end of each  
15 year, based on the company's performance,  
16 we award a merit bonus. This bonus is --  
17 the management staff as a whole is  
18 reviewed, and each individual receives part  
19 of this bonus. The bonus is based on our  
20 profits.

21 Q. Okay. And was that divided according to  
22 some preset percentage?

23 A. It is not a preset percentage each year.

1           Generally the management staff receives a  
2           general -- similar amount, and the  
3           production workers receive a lesser but  
4           similar amount.

5       Q.    Similar amount? Okay. Is that amount at  
6           the end of a year entirely discretionary  
7           with you?

8       A.    Yes, it is.

9       Q.    Okay. Did Ms. McCollum's position carry  
10           with it the payment of any insurance  
11           benefits, health insurance or life  
12           insurance?

13      A.    I can't remember specifically her scenario,  
14           but we do pay health insurance, a part of  
15           the premium for health insurance, and  
16           provide -- I don't think at that time we  
17           provided life insurance. But I do know  
18           that if an employee elects to be part of  
19           it, then the premium for the employee is  
20           matched, and we do provide that.

21      Q.    Okay. How about any type of 401(k) plan or  
22           retirement plan?

23                   MR. TRAWICK: You're asking for

1 plan that she's eligible to be a  
2 participant in?

3 A. Depending on the profits of the company, it  
4 would be similar that I discussed earlier.  
5 Each person would participate.

6 Q. Okay. So depending on the profitability of  
7 the company, there could be a bonus and a  
8 contribution to a retirement plan?

9 A. Yes.

10 Q. Were there any bonuses or retirement  
11 contributions in 2005?

12 A. No.

13 Q. Okay. I believe that's the year you told  
14 me business was --

15 A. Right. Right. I'm going to verify -- I'm  
16 going to say no, but I'm almost certain  
17 that we -- because of the condition, we --  
18 there was no contribution made to the  
19 profit sharing or any bonusing. I'm going  
20 to -- I don't think so. Again, that --  
21 sometimes -- I can't remember exactly, but  
22 I'm going to say I don't think so.

23 Q. Would the same general principle apply to

1 A. Again, I --

2 Q. I guess I really want to know --

3 A. It's available to him. Is that what you --

4 Yes, it's available to him. I'm not sure  
5 if he participate or not.

6 Q. But in the event he does, the company would  
7 pay half his premium?

8 A. Exactly.

9 Q. Okay. Tell me what Ms. McCollum's duties  
10 were when she was initially hired.

11 A. She was basically in the accounting  
12 manager's position. The accounts payable,  
13 the payroll, the accounts receivable. And  
14 to some degree, her duties also had the --  
15 she issued or -- I can't remember what she  
16 did exactly, but she issued purchase orders  
17 or assisted with the issue of purchase  
18 orders.

19 Q. If materials were needed for the production  
20 process, would your inventory control type  
21 person be one who would initiate obtaining  
22 those materials?

23 A. The way we would plan it is a guideline for

1 needs that we try to establish, and then  
2 those needs are met with issuing blanket  
3 purchase orders. Blanket purchase orders  
4 are over a length of time, and they allow  
5 delivery of certain parts on a schedule.  
6 Generally, Ms. McCollum issued these POs.  
7 The materials individuals would update her  
8 on shortages or overages, I guess, in the  
9 case it does happen, or I guess in some  
10 cases when there's a yield loss if there  
11 are parts that are received wrong.

12 Q. I'm going to talk here a little bit more  
13 than I want to, but, again, trying to  
14 understand. I have read of something  
15 called just-in-time management. Is that  
16 what you attempt to do with your --

17 A. That's very much what we attempt to do.

18 Q. So Ms. McCollum would be the person who  
19 would send the purchase order out based on  
20 what someone else told her the need was, or  
21 what was her role?

22 A. Her role at that period would be -- I  
23 believe she at that time issued the

1 purchase order based on -- she would  
2 discuss -- we had a weekly meeting, and --  
3 or if we didn't have a weekly meeting, she  
4 would discuss with the logistics person the  
5 requirements, and then she would issue the  
6 blanket orders on that behalf.

7 Q. And could you tell me just -- could you  
8 tell me in a simple sort of way what a  
9 blanket order is?

10 A. A blanket order is a purchase agreement for  
11 delivery of parts over time. So rather  
12 than one document saying a certain number  
13 of parts delivered at one time, it's a  
14 document that has multiple deliveries,  
15 delivered over time.

16 Q. Okay. Would it be something that would  
17 authorize up to a certain amount --

18 A. Yes.

19 Q. -- over a period of time?

20 A. That's exactly what it is.

21 Q. Okay. I noticed in our discussion thus  
22 far, I don't believe there has been any  
23 mention of a sales force. Do you have a



1 specialized sales division?

2 A. That's my role primarily, but we sell  
3 through distributors.

4 Q. Okay. When Ms. McCollum was hired as  
5 accounting manager, who was her  
6 supervisor?

7 A. I was.

8 Q. At any time during her employment, did she  
9 have any other supervisor other than you?

10 A. No.

11 Q. I think the answer is obvious, but who in  
12 the company would be in the best position  
13 to know about Janice's performance as  
14 accounting manager?

15 A. I would.

16 Q. Were there any personality conflicts  
17 between Ms. McCollum and other management  
18 staff?

19 A. Not that I was aware of.

20 Q. How did you come to hire Ms. McCollum? How  
21 did you learn about her?

22 A. She responded to an ad we placed in the  
23 paper, Montgomery Advertiser, and she

1 submitted her resume. We talked to her.

2 Q. Okay. Did you then interview her after  
3 that?

4 A. Yes, I did.

5 Q. Did you contact any references or other  
6 persons before you made a decision to hire  
7 her?

8 A. I can't recall in her case specifically.  
9 Generally, we do ask for a couple of  
10 references. I can't remember exactly what  
11 I did in her case.

12 Q. Okay.

13 A. She did have a -- because her -- if I can  
14 say, there was an automatic reference. Her  
15 husband did work next door.

16 Q. Okay. That's a different company?

17 A. Uh-huh (positive response). Yes. I'm  
18 sorry.

19 Q. Okay. So did you feel like you knew her or  
20 knew of her?

21 A. No. Only thing is that was one --

22 Q. One of the things you remember about --

23 A. Right. Considering her for employment,

1       A.     I would say her job was to manage the  
2             accounting system: Receipt of invoices  
3             from vendors. Matching those invoices to  
4             purchase orders and packing lists,  
5             generating the payment for those,  
6             generating the check for those, signing the  
7             check, and even putting it in the envelope  
8             and processing it for mail.

9             On the AR side -- excuse me -- accounts  
10            receivable side, she would issue the  
11            statements from Amtren to our customers.  
12            On the payroll side, she would issue the  
13            payroll on a weekly basis. She was also  
14            responsible for paying tax deposits  
15            weekly. She was responsible for  
16            submission -- in the accounting role,  
17            submission of the statements that the --  
18            the reporting that has to go to the state  
19            and the federal agencies.

20            I think that pretty much sums it up.

21       Q.     Okay. Did she get additional duties as she  
22             was employed other than those you've  
23             described?

1 A. Yes, but if I can back up. Some of the  
2 duties I just mentioned, she was -- they  
3 were provided at the end versus the  
4 beginning.

5 Q. At the beginning?

6 A. And around October of -- let's see --  
7 September, October of 2004, she received  
8 the authority to sign checks and to  
9 completely control the disbursement of our  
10 funds.

11 Q. What reports did she provide to you on a  
12 regular basis?

13 A. There's a report that we call recap report  
14 that was a weekly recap that she would  
15 summarize the basic parts of the company as  
16 far as cash, the money we owed vendors,  
17 accounts payable, the money that's owed us,  
18 accounts receivable, the position on our  
19 line of credit.

20 Additionally, the form would have maybe  
21 some forecasting in it; you know, based on  
22 the current open orders, this may be the  
23 potential income.

1 A. No.

2 Q. Were there any that you are aware of that  
3 were not reported to you?

4 A. Yes.

5 Q. What was that?

6 A. Just talking about specific inventory  
7 items, right?

8 Q. I'm talking --

9 A. Let me back up and state that I can't give  
10 you specifics on that. And I want to be  
11 careful and answer your exact question. I  
12 was saying in general in making a  
13 statement, so --

14 Go back and ask me one more time. Let  
15 me make sure I'm being very specific.

16 Q. It was my understanding that you were  
17 telling me that her responsibilities in the  
18 area of inventory control were what I'll  
19 call an audit process.

20 A. Exactly.

21 Q. A verification process.

22 A. Right.

23 Q. Tell me exactly what she was supposed to

1 do.

2 A. She would basically go into -- she would  
3 work with production and schedule it. She  
4 would go in there with the production  
5 staff. We would stall production. They  
6 would count all the parts. She would then  
7 return to her office and sit down and enter  
8 all the corrections into the system. What  
9 she would then report is an outage of  
10 inventory. What -- did not isolate  
11 individual outages per part. So she would  
12 indicate a -- I guess a gross outage.

13 What I indicated in errors were that as  
14 we discovered, when she was making the  
15 gross adjustments, she was just basically  
16 taking the plus and minuses and giving me a  
17 net result. When some of the swing of the  
18 inventory count was significant, I was not  
19 being reported that.

20 Q. Did she have any other responsibilities as  
21 far as inventory control was concerned?

22 A. Not actually control. That would be it.

23 Q. Okay. This process of reporting to you a

1 A. I gave her that.

2 Q. How did you do that?

3 A. I asked for more information be provided  
4 during the weekly summaries that she was  
5 providing.

6 Q. Okay. And when you say you asked, was that  
7 verbal or in writing?

8 A. It was verbal.

9 MR. JACOBS: I'd like to take a  
10 short break.

11 (Brief recess.)

12 Q. (Mr. Jacobs continuing) Mr. Lamberth, did  
13 Ms. McCollum have a written job  
14 description?

15 A. No. I don't recall. I don't think we ever  
16 did. As a whole, we don't do job  
17 descriptions.

18 Q. That was going to be my next question.  
19 Does anyone in the company have a job  
20 description, a written one?

21 A. No.

22 Q. In your response to our discovery  
23 request -- I'm going to ask you about a

1 series of things and reasons that you gave  
2 for terminating Ms. McCollum.

3 One of those things was you allege that  
4 she failed to adequately perform her  
5 responsibilities pertaining to Amtren's  
6 accounting system.

7 MR. TRAWICK: You're reading from  
8 paragraph number eight on page  
9 four?

10 MR. JACOBS: I believe so, yes.  
11 We're going to be drawing from  
12 that for the next period of  
13 time.

14 THE WITNESS: What page?

15 MR. TRAWICK: Four.

16 Q. Page four, number eight.

17 What responsibilities did she fail to  
18 adequately perform?

19 A. For?

20 Q. The accounting system.

21 A. The accounting system? Like the day-to-day  
22 activity or the --

23 Q. I honestly don't know. I'm reading your



1 response to you and telling you -- asking  
2 you to tell me what responsibilities she  
3 adequately failed to perform.

4 A. The accounting system -- basically, there  
5 were several areas that -- you know, in the  
6 accounting system, this is -- you're not  
7 really pertaining to the software or  
8 anything, you're talking about the  
9 duties -- we're talking about the duties,  
10 you're basically saying now?

11 Q. I don't know what I'm talking about. I'm  
12 asking you about your --

13 MR. TRAWICK: I think he's just  
14 asking you to explain this  
15 answer.

16 Q. Yes.

17 A. Okay. I can clarify that the system in  
18 that statement was a process, so I can  
19 explain her deficiencies in that. When I  
20 mean system, I mean a system like our  
21 entire process.

22 Several areas that she did. One is  
23 that she did overdraw at our -- on our bank

1 account. We had never had that before. I  
2 was unaware of that. I was never made  
3 aware of that, and Amtren had adequate  
4 funds for the transactions.

5 She issued the checks -- signed the  
6 checks, disbursed the checks, and then  
7 pulled money from our money market account  
8 to our checking account incorrectly. And  
9 then they would basically, apparently, not  
10 be covered, and we would pay for those  
11 penalties with overdraft charges.

12 Q. Was this a particular transaction you're  
13 talking about, or was this more than one  
14 transaction?

15 A. No, it was more than one transaction. If  
16 I'm not mistaken, it was several. It  
17 amounted to several thousand dollars in  
18 overdraft charges.

19 Q. Could you identify those transactions for  
20 me?

21 A. Could I identify them?

22 Q. Yes.

23 A. I believe that -- I don't know if we

1 provided a list or not. I'm not sure.

2 Q. Let me represent to you that I haven't seen  
3 a list.

4 A. Well, I guess we will have to -- I believe  
5 that there is a list in this. Hang on.  
6 There is a list in here.

7 MR. TRAWICK: I think the last  
8 page.

9 A. It is in the --

10 MR. TRAWICK: We produced this to  
11 you.

12 A. Right. It is the last page of this.

13 Q. And that would be the last page of your  
14 response to the EEOC?

15 A. That's correct.

16 Q. All right.

17 A. Regarding the --

18 Q. If we could mark this as Plaintiff's  
19 Exhibit 2.

20 (Plaintiff's Exhibit 2 was marked  
21 for identification.)

22 MR. TRAWICK: Plaintiff's Exhibit  
23 2 will be this five-page

1 letter to the EEOC signed by  
2 Kirk?

3 MR. JACOBS: Right.

4 (Plaintiff's Exhibit 3 was marked  
5 for identification.)

6 MR. JACOBS: And then Plaintiff's  
7 Exhibit 3 will be the  
8 attachment relating to item  
9 five.

10 Q. Is that the one you're referring to, bank  
11 overdrafts, Mr. Lamberth?

12 A. Yes.

13 Q. If you would, explain that sheet to me.

14 A. This sheet is a summary that outlines just  
15 the transactions on our checking account  
16 for these periods of time regarding this  
17 activity. We -- I had never really  
18 experienced overdrafts before, so when we  
19 discovered this, we just produced this  
20 document as a summary document to represent  
21 the number of NSF's which are identified in  
22 there.

23 Q. First of all, when was this document

1 generated, this summary?

2 A. I would say it would be on or around the  
3 date of this letter.

4 Q. Okay.

5 A. June 29th of 2005.

6 Q. Let me just look at the very first item  
7 there, 10/26/2004. It says,  
8 reversal/credit, and then it has the number  
9 30 over there. Could you explain to me  
10 what that represents?

11 A. I'm not sure what that means. The only  
12 part of this document that I'm probably  
13 going to be -- that I focused on or --  
14 would be the NSF charges.

15 Q. Okay. And there are a series of those from  
16 10/29 of 2004 to 4/13/2005.

17 If you would, take the first one of  
18 those, 10/25, and tell me what that  
19 represents.

20 A. You mean the NSF?

21 Q. Yes. Yes, the NSF.

22 A. It's my understanding that that is a charge  
23 for nonsufficient funds for a check

1           presented at our bank without proper funds  
2           in the account.

3       Q.    What does the dash 30 mean?

4       A.    I think that that is a charge to our -- for  
5           the overdraft charge.

6       Q.    Okay. You're not sure what that is?

7       A.    I'm -- on that one, I think that is. It  
8           states NSF fee. I'm pretty certain that  
9           that's a charge from the bank to us for the  
10          overdraft.

11      Q.    Okay. Is it my understanding, then, that  
12           these other items on here other than NSF  
13           fees don't represent errors of any kind  
14           that you're referring to as --

15      A.    Not to my knowledge. I think that was a  
16           summary document that was produced that had  
17           other information on it. We were primarily  
18           for this attachment focused on the NSF fee  
19           portion.

20      Q.    Okay. And who generated this report?

21      A.    I did.

22      Q.    You did?

23      A.    Uh-huh (positive response).

1 Q. How did you generate this report?

2 A. This report was pulled from our -- if I'm  
3 not -- basically, it was produced as an  
4 export from our on-line banking system, I  
5 guess, log in.

6 Q. Okay. Did you have at that time open  
7 access to your on-line accounts?

8 MR. TRAWICK: At which time?

9 Q. In 2004 and 2005.

10 A. I had access to it. I did not use it,  
11 though.

12 Q. Okay. And it's your testimony that you  
13 never had NSF's before?

14 A. Not to that magnitude, nor were they not  
15 reported to me.

16 Q. Okay. Then it's your testimony that  
17 Ms. McCollum was responsible for this and  
18 that she never informed you of this in any  
19 way?

20 A. No.

21 Q. Okay.

22 MR. TRAWICK: Wait. Read the  
23 question back and read his

1 answer.

2 (The following was read: Then it's  
3 your testimony that Ms. McCollum  
4 was responsible for this and that  
5 she never informed you of this in  
6 any way? Answer: No.)

7 A. I meant to say yes. I am so sorry about  
8 that. I'll listen to the question.

9 Q. Okay. This is entitled -- and I'll just  
10 read it -- attachment to response relating  
11 to item number six, bank overdrafts. Could  
12 you tell me what item six you're referring  
13 to in there in Plaintiff's Exhibit Number  
14 2?

15 MR. TRAWICK: Well, you said  
16 item -- this reads item five.

17 MR. JACOBS: I'm sorry. It is. I  
18 looked at it upside down and  
19 wrong.

20 Q. Is it item --

21 MR. TRAWICK: Item five.

22 Q. -- five of the EEOC response?

23 A. Well, it actually is -- you know, your



1 question is regarding --

2 Q. Yes. What I want to know is what this  
3 reference is to, to item five.

4 A. Item five --

5 MR. TRAWICK: On Plaintiff's  
6 Exhibit 3.

7 Q. Three. What does that refer to in  
8 Plaintiff's Exhibit 2?

9 A. That refers to -- in the summary, it is  
10 item five in the summary.

11 Q. Okay. And that was my error in looking at  
12 it across the table upside down.

13 MR. TRAWICK: That's okay. You  
14 just confused me.

15 MR. JACOBS: Confused me, too.

16 Q. Okay. Your next statement was that she  
17 overspent on inventory. How did she  
18 overspend on inventory?

19 A. In January of -- in late December of 2004  
20 and January of 2005, was the planned move  
21 to the new product. So in February of  
22 2005, we had planned to reduce the material  
23 purchasing for the older FlexWriter model

1           that we -- it would be -- the revisions I'm  
2           talking about.

3           The plan was never followed through  
4           with, and we ended up with materials of the  
5           older revision model. In other words, the  
6           way the inventory was -- the mistaken  
7           inventory resulted in the fact that --

8           We had had weekly meetings discussing  
9           the fact that we would move to the new  
10          model. The new model would dictate a lot  
11          of changes in parts. We would subsequently  
12          reduce the purchasing of the current model  
13          parts so that at the end of January, we  
14          would end up with a very low inventory  
15          count. In February of that month, we would  
16          do a retooling -- I mean, February of that  
17          year, we would do a retooling and start  
18          back up in March with the planned product.

19          Ms. McCollum mistakenly purchased  
20          excessive inventory to the amount that we  
21          had to delay the release of the new product  
22          immediately because the number of parts  
23          that we had were three to four to five

1 would say that it was the fact that the  
2 materials were received in and we were  
3 dealing with the materials on our floor. I  
4 can't say, really, I had a document that  
5 showed that. It just -- we had the  
6 availability of a lot of the older material  
7 parts in our inventory.

8 Q. All right. Are you telling me, then, that  
9 Ms. McCollum ordered materials based on the  
10 blanket purchase orders that were in place?

11 A. I'm not sure how the mistake may have been  
12 made or was made. What I was alluding to  
13 is that I was under the impression that she  
14 was executing the proper changes to reduce  
15 our inventory down at that point, and that  
16 was not executed properly.

17 Q. Okay. Did your logistics person have any  
18 role in maintaining that inventory or  
19 getting the right inventory?

20 A. The individual at that point would receive  
21 in the goods that would be issued based on  
22 the purchase orders that were there. That  
23 individual would basically -- depending on

1           can't really pinpoint everything about all  
2           of this. But the fact of the matter was  
3           Ms. McCollum's role was to control the  
4           purchase documents to sufficiently decrease  
5           our inventory to a low balance in January.

6       Q.   All right.

7       A.   That was not done.

8       Q.   Okay. And was that a specific directive in  
9           writing?

10      A.   We talked about it every week in a staff  
11          meeting and discussed this progression.

12      Q.   So that was the management meeting?

13      A.   Yes.

14      Q.   Okay. Was this one of the reasons that you  
15          terminated Ms. McCollum?

16      A.   Yes.

17      Q.   The next item in your response there was  
18          caused Amtren's checking accounts to be  
19          overdrawn and failed to notify management.  
20          Is that the one we've already talked  
21          about?

22      A.   That is. We've talked about that.

23      Q.   So that's the same as number -- as the

1 first one, failed to adequately perform her  
2 responsibilities pertaining to the  
3 accounting system?

4 A. Yes.

5 Q. Okay. Which one or ones of Amtren's  
6 vendors did Ms. McCollum not pay?

7 A. Ms. McCollum in -- toward the end of  
8 February, the beginning of March, several  
9 vendors contacted me directly and stated to  
10 me that their -- they said --

11 The two primary vendors are Brundidge  
12 Electronics Corporation in Brundidge,  
13 Alabama, and Carter & Carter Manufacturing  
14 in Lacey's Spring, Alabama. They're our  
15 two largest vendors. We have done business  
16 with them for years.

17 They contacted me with concern over  
18 payments to their account.

19 Q. Okay.

20 A. Basically, we were approaching a limit of  
21 terms with them that they -- we were  
22 exceeding the credit limit is what we were  
23 approaching.

1 Q. All right. How did they contact you?

2 A. By phone.

3 Q. Do you have records of when they contacted  
4 you with those phone calls?

5 A. Unh-unh (negative response). I do not.

6 Q. What specifically did they tell you when  
7 they called you?

8 A. Just that they were concerned about the  
9 payments to their accounts.

10 Q. Are you telling me they said they had not  
11 been paid?

12 A. They -- really, more likely that the amount  
13 of money that -- we weren't paying against  
14 their account enough to decrease the amount  
15 we owed them. In other words, the  
16 outstanding amount was growing.

17 Q. Okay. Was that outstanding amount  
18 reflected in the weekly recaps that you  
19 got?

20 A. Not completely.

21 Q. Was it partially?

22 A. Partially.

23 Q. Were the company's accounts, cash accounts

1           sufficient to make larger payments at that  
2           time?

3       A.    They should have been.

4       Q.    Well, were they?

5       A.    At that time, this would be -- I would say  
6           there should have been adequate cash to pay  
7           the accounts.

8       Q.    All right. Do you know whether there was  
9           adequate cash or not?

10      A.    To the best of my knowledge, there was  
11           adequate cash there.

12      Q.    If Ms. McCollum were to represent that  
13           there was not adequate cash to pay more,  
14           you would say that was not true?

15      A.    Not correct. That's really not -- Let me  
16           see. Let me go -- basically, the cash  
17           planning of the company was Ms. McCollum's  
18           responsibility. We had a line of credit  
19           and we had a checking account and we had  
20           materials. Totally responsible. Totally  
21           responsible for issuing the checks. So the  
22           problem occurs in that the cash position  
23           was also being reported there, too. The

1 line of credit. So it's difficult for me  
2 to state one item without looking --  
3 discussing the other ones, see, because she  
4 reported the entire -- both situations to  
5 me.

6 Q. All right.

7 A. So we -- according to the plans, going back  
8 to the planned migration of the product,  
9 meaning the older revision to the newer  
10 revision, there was plenty of cash and a  
11 line of credit available to pay all vendors  
12 timely.

13 Q. All right. What would we have to look at  
14 to verify that there was enough cash or  
15 that there was not enough cash available?

16 MR. TRAWICK: Well, you're  
17 limiting your question to  
18 cash. I think his answer  
19 includes the line of credit  
20 also.

21 Q. Well, then, I'll back up. What were all of  
22 the things that we would have to look at to  
23 determine whether there was sufficient



1           come from the bank statements, too.

2           Q.     Okay.

3           A.     I believe that that would -- again, I'm not  
4                completely well versed at how you would  
5                check that, but I believe that would be the  
6                way to do it.

7           Q.     What did you look at to make your  
8                determination that that was the cause, that  
9                she didn't pay the vendors, and there was  
10              plenty of cash available?

11          A.     Well, the -- my result -- this statement  
12                results from the fact that when I was  
13                made --

14                The vendors contacted me. I did  
15                research into this to look into it. At  
16                that time, I guess the information showed  
17                that we had really just overspent in  
18                several areas, including the inventory. So  
19                my issue with Ms. McCollum at that time was  
20                the incorrect execution of it or even  
21                sharing with us this, you know, that this  
22                was an issue that was arising.

23                Am I answering the question?

1 Q. Well, what I'm trying to determine,  
2 Mr. Lamberth, is sort of what you said.  
3 You said at the time, you researched this.  
4 I'm trying to find out what you researched,  
5 what did you look at, what would I have to  
6 go back and look at to verify whether what  
7 you say you saw was, in fact, true.

8 A. I would say that I verified the accounts  
9 payable that was being informed to me. And  
10 some of these reports that I'm getting we  
11 have not been able to locate as yet. So  
12 what I was using was basically the  
13 information shared from the weekly to show  
14 the outstanding accounts payable, which is  
15 the amount of money we owe the vendors.  
16 When I received a call like this, I did not  
17 know that that was growing. So my research  
18 would have been to look into the accounts  
19 payable, which in March I began to see  
20 certain areas that concerned me. That  
21 indicated to me that the information shared  
22 with me on a weekly basis was not exactly  
23 the position of the accounts payable we

1           owed our vendors.

2           Q.    If I were to look at or to have someone  
3               knowledgeable to look at the accounts  
4               payable, would I see the same things you  
5               saw?

6           A.    The issue here is the weekly reporting to  
7               me as her supervisor versus what was  
8               actually in the system. I do not know --  
9               we have not been able to produce the weekly  
10              reports completely yet, though we've  
11              looked. So the issue is the information  
12              shared with me on a weekly basis versus the  
13              position of the company.

14          Q.    So you don't have any evidence to back that  
15               up at this time?

16                       MR. TRAWICK: Object to the form.  
17                       I don't think that's what he  
18                       testified to.

19          Q.    Well, I mean --

20          A.    No. We have evidence, yes. Given time, we  
21               can produce evidence.

22          Q.    Okay. Well, what evidence do you have?

23          A.    The evidence will be I have some of the

1 A. Relating to the inventory?

2 Q. Yes, relating to that issue.

3 A. No.

4 Q. Do I understand you that you believe there  
5 are other documents that you have not been  
6 able to locate yet that would substantiate  
7 that position?

8 A. We have been through the files  
9 extensively. Unfortunately, I do not think  
10 we will be able to locate a lot of these  
11 documents.

12 Q. When Ms. McCollum gave you weekly reports,  
13 what did you do with them?

14 A. Most of the time, she would take them back  
15 with her. Occasionally I would maybe keep  
16 a copy of them, but not anything definite.

17 Q. So you didn't have any regular  
18 recordkeeping system?

19 A. Not personally, I did not. I relied on the  
20 staff to do that.

21 Q. Have you told me the basis for the  
22 statement that she failed to notify  
23 management that some of the vendors were

1 not being paid? Is that what you were just  
2 telling me about?

3 A. Well, the -- probably the -- there is an  
4 issue about the health insurance that would  
5 have occurred where -- that is a vendor --  
6 where the health insurance premium was not  
7 being paid timely, and we received notice  
8 of this. Basically, during my research  
9 during this period of investigating, I  
10 discovered that our health insurance was  
11 not being paid timely. That's one. Those  
12 are probably the three most significant  
13 ones.

14 Q. What period of time was this investigation?

15 A. Probably end of February through March,  
16 first of April.

17 Q. Okay. During this time period that you  
18 were doing this investigation, did you  
19 discuss any of this with Ms. McCollum?

20 A. I discussed with her weekly about getting  
21 the accounts payable information to match  
22 what exactly we owed. I asked her weekly  
23 to be certain that the accounts payable

1       A.    Yes, we had them reproduced. That's the  
2            only thing -- we went -- during the period  
3            of time that I was doing research, I  
4            couldn't find a substantial amount of  
5            files, which led to me having to rely more  
6            and more on the weekly summary sheets  
7            provided. So the issues we were not -- we  
8            were not able to -- a lot of the documents  
9            that -- well, the way the files were  
10           arranged, the documents, it's very hard to  
11           locate a lot of things. We just couldn't  
12           find some things.

13       Q.    When did you request those statements from  
14            the bank?

15       A.    It would have been approximately end of  
16            April, first of May.

17       Q.    Okay. It was after Ms. McCollum was  
18            terminated?

19       A.    Yes.

20       Q.    Okay. Overpaid some vendor invoices. What  
21            does that refer to?

22       A.    That refers to specifically the Plextor  
23            invoice where we had -- Ms. McCollum had

1 missed a price change on the product and  
2 had overpaid the vendor.

3 Q. Okay. How did Plextor communicate to  
4 Amtren any changes in its prices?

5 A. Plextor's role as a vendor is to provide  
6 any current price change that's applicable  
7 during the period. Ms. McCollum had issued  
8 blanket orders that exceeded these  
9 periods. The proper way that would have  
10 protected a price change would be to  
11 footnote some notification of this. Our  
12 purchase documents did not.

13 The price change -- I noticed, myself,  
14 that another vendor, a trade vendor was  
15 selling the Plextor at a lower price. I  
16 made the statement in a weekly meeting, and  
17 subsequently further review showed that  
18 Plextor had made a price change somewhere  
19 around the middle of October. We had  
20 requested Ms. McCollum to follow up on that  
21 and to revise the purchase documents that  
22 control the receipt of goods. Apparently,  
23 as this shows, she failed to change the

1 purchase documents, and the materials were  
2 still received in at the higher price.  
3 Also the payments were issued and the  
4 checks signed from Ms. McCollum for the  
5 payment of the higher price.

6 Q. When did you discover that?

7 A. That was discovered -- I would say that was  
8 discovered somewhere around the first part  
9 of -- that February time frame that we  
10 were -- that I was beginning to review  
11 things more carefully.

12 MR. TRAWICK: In 2006?

13 A. I'm sorry. 2005. 2005.

14 MR. TRAWICK: Excuse me.

15 Q. And did you report that to Ms. McCollum?

16 A. That one I did discuss with Ms. McCollum,  
17 and she assured me that it had been  
18 corrected and that credits would be issued.

19 Q. Okay.

20 A. And they were not, by the way.

21 Q. You never got credit for those?

22 A. We sought credits after Ms. McCollum had  
23 departed. I sought credits with Plextor



1 and recovered thousands of dollars. And  
2 that is one of the documents I believe that  
3 is -- I think that we sought credit for the  
4 payment for the price change, or -- they  
5 weren't able to give us the whole amount.  
6 I believe they were able to give us several  
7 thousand dollars.

8 MR. TRAWICK: It's in six.

9 A. I believe, since we don't have all the  
10 documents here, that we did submit -- it's  
11 hard for me to verify with what we have  
12 here, but the Plextor documents were part  
13 of our --

14 MR. TRAWICK: The Plextor

15 documents were not part of the  
16 response to the EEOC. I don't  
17 recall which documents off the  
18 top of my head because we  
19 produced quite a few documents  
20 in response to your request  
21 for production of documents.  
22 But there is a summary in the  
23 response to the EEOC regarding

1 the issue of Plextor.

2 Q. But there were no documents submitted to  
3 the EEOC?

4 A. That's correct.

5 Q. All right. You speak of the payroll tax  
6 deposits. Are there any documents other  
7 than those that are attached to your EEOC  
8 response, item number one?

9 A. To the best of my knowledge, that was what  
10 we had at that time, yes.

11 Q. Okay. Well, let's --

12 MR. TRAWICK: Again, we produced  
13 numerous documents in response  
14 to your request for  
15 production. I know that's not  
16 a trick question.

17 MR. JACOBS: No, it's not. And I  
18 would say that some of the --

19 MR. TRAWICK: You're asking him if  
20 that's all the documents, and  
21 without having the documents  
22 that we've produced to you, I  
23 think that's an unfair

1 question the way you phrased  
2 it.

3 Q. Are these all the ones you produced to the  
4 EEOC?

5 A. Yes, that is true.

6 MR. JACOBS: Well, let's mark that  
7 one as Plaintiff's Exhibit  
8 Number 5.

9 (Plaintiff's Exhibit 5 was marked  
10 for identification.)

11 Q. And probably, to move this along, the next  
12 couple of items are failed on several  
13 occasions to timely respond to notices from  
14 tax revenue departments, including the  
15 Internal Revenue Service. Caused Amtren to  
16 receive penalties for late tax deposits.  
17 Are those the same thing?

18 A. Right. They relate -- again, clarifying, I  
19 don't know the extent of the documents we  
20 provided, but they do relate to this item  
21 number one that you just submitted here.

22 Q. All right. And the issue of the insurance  
23 payments I believe we've already talked

1 (Plaintiff's Exhibit 6 was marked  
2 for identification.)

3 Q. Could you explain to me what you meant by  
4 exceeded her authority on several  
5 occasions.

6 A. Primarily that would relate to the copier  
7 lease where that -- we had discussed  
8 obtaining a copier, and we did obtain a  
9 copier, and she entered into a lease  
10 agreement. Even though the company had  
11 discussed the fact that we would do that, I  
12 was unaware that she had executed a lease.

13 Q. Was that discussed in one of the management  
14 meetings, getting a copier?

15 A. The copier. Not the execution of the lease  
16 without an officer signing it.

17 Q. Okay.

18 MR. JACOBS: Let's mark this one  
19 as Plaintiff's 7.

20 (Plaintiff's Exhibit 7 was marked  
21 for identification.)

22 Q. The next item refers to price decreases  
23 from Plextor. Have we discussed that?

1 A. That was the item we talked about.

2 Q. All right. Which of her duties pertaining  
3 to the purchase of MAS90 did she not  
4 perform adequately?

5 A. The integration of MAS90 was discussed  
6 extensively at the end of 2004, and we had  
7 generated a document to sit down and review  
8 this process. The undertaking would be  
9 significant. It was my understanding that  
10 as Ms. McCollum moved forward with that,  
11 she would seek integrated services, turnkey  
12 integrated services from the vendors that  
13 we were discussing. She handled the  
14 discussions with the vendors and sought the  
15 bidding and was subsequently awarded the  
16 bid. At that time -- and it wasn't until  
17 later did I know that we did not submit --  
18 we did not obtain a fully integrated  
19 package. We obtained a package that was  
20 partially integrated that we would  
21 subsequently have to -- I guess the word is  
22 enter the data on our own later to  
23 completely fulfill it.

1 Q. Did you ever see the agreement that was  
2 signed regarding that system?

3 A. I saw parts of the agreement. I don't know  
4 that I knew specifically about that. It  
5 was Ms. McCollum's responsibility. For  
6 Amtren's benefit, that had to be a fully  
7 integrated system. It was my understanding  
8 with her we would obtain a turnkey fully  
9 integrated system, and I subsequently  
10 approved her to spend the moneys that we  
11 did on that. I do not recall looking  
12 specifically at the details of the contract  
13 to that extent.

14 Q. Was there a specific amount of money that  
15 you approved for her to spend?

16 A. I don't think it was specific, but I think  
17 we do -- we did discuss the numbers that we  
18 ended up paying. I don't know the exact  
19 numbers, but I do think 20 or \$30,000. The  
20 issue was not really the financial part so  
21 much as to make sure it was turnkey; that  
22 it was to be fully implemented.

23 Q. Okay. So if I can restate, and you tell me

1 if I'm wrong. Is it fair to say that what  
2 you're complaining of there is the fact  
3 that she did not contract with Wilson,  
4 Price for a completely installed and  
5 implemented system?

6 A. Yes. That is a pretty fair assumption.  
7 There are a lot of terms that have been  
8 passed around about integration of MAS90.  
9 The issue that we had was pretty much in  
10 line with what you said.

11 Q. Okay. And is that also the basis for your  
12 complaint, the next one, that she released  
13 Wilson, Price prior to the complete and  
14 satisfactory conversion to the new  
15 accounting system?

16 A. Yes.

17 Q. Who was your technical assistance person  
18 from Wilson, Price in implementation of  
19 that system?

20 A. Bobby Lake.

21 Q. Okay. Do you know if Bobby Lake ever  
22 complained to Wilson, Price regarding any  
23 lack of appropriate performance on the part

1 to -- he did make -- there was a sizable  
2 mistake made in the costing of our product  
3 through the year. At the end of the year,  
4 the initial report showed the mistake.  
5 Before we closed the year end and produced  
6 the documents, it was corrected. So I  
7 would say yes, there was an error or  
8 omission on his part at that time.  
9 Subsequently we identified that and  
10 discussed it with him and --

11 Q. Corrected it?

12 A. -- corrected it.

13 Q. And I assume he did not get terminated?

14 A. He got moved to a different position. He  
15 got -- he was removed entirely from his  
16 accounting duties.

17 Q. Okay. What position was he moved to?

18 A. Primarily purchasing -- well, the  
19 production and logistics role.

20 Q. Okay. I believe that it's been indicated  
21 in responses that Lisa McNamee took over  
22 Ms. McCollum's duties when she was  
23 terminated.



1 A. That's correct.

2 MR. TRAWICK: Well, I think our  
3 responses were she took over  
4 some of the duties, and later  
5 Susan took over some as  
6 Mr. Lamberth has testified  
7 here today.

8 Q. Okay. What duties did Lisa McNamee take  
9 over?

10 A. Primarily the execution of the accounts  
11 payable, accounts receivable. She did the  
12 accounting portions as far as the --  
13 actually, the payroll, the accounts  
14 payable, and the accounts receivable.

15 Q. Putting information into --

16 A. And mainly producing the documents --

17 Q. Okay.

18 A. She produced the checks for payment. She  
19 did everything -- she did not sign them,  
20 but she did produce the checks for payment.

21 Q. Okay. Did she have the same responsibility  
22 in reference to those blanket purchase  
23 orders that you were talking about?

1 A. In generating them, because of the  
2 deficiencies of the system, we worked  
3 together to try to correct some of those.

4 Q. Okay. And Susan Seeber, what duties did  
5 she have when she came on board?

6 A. She basically --

7 MR. TRAWICK: Other than what he's  
8 already testified to?

9 MR. JACOBS: Yes.

10 A. That's primarily it.

11 Q. Okay.

12 MR. TRAWICK: Unless you have  
13 something to add to what  
14 you've already testified to.

15 THE WITNESS: No.

16 Q. Who at the company was responsible for  
17 strategic planning?

18 A. That probably would be myself.

19 Q. Have you fired any management employees at  
20 Amtren other than Ms. McCollum?

21 A. You mean in the history of the company  
22 or --

23 Q. Yes.

1 Q. Was she a full-time employee?

2 A. Yes, she was.

3 Q. And where did she -- what was her position?

4 A. She was an assistant to me.

5 Q. Who was responsible for filing your tax  
6 payments and tax returns after Ms. McCollum  
7 was terminated?

8 A. That would have -- immediately after that,  
9 it would have fallen into Ms. McCollum's  
10 responsibilities -- I mean, Ms. McNamee's  
11 responsibilities. Yes. Immediately upon  
12 that, it would have been -- fallen to  
13 Ms. McNamee.

14 Q. When did you first become aware of what was  
15 submitted as Defendant's Exhibit 5 at  
16 Ms. McCollum's deposition? I believe it's  
17 Exhibit 5 also to this deposition.

18 MR. TRAWICK: You have

19 Defendant's --

20 MR. JACOBS: I have Defendant's 5  
21 here.

22 MR. TRAWICK: I don't have my copy  
23 of her deposition. Can we

1 A. They sent a letter of notice of  
2 termination, immediate termination.

3 Q. And I guess my question is, did they  
4 actually terminate it?

5 A. Upon receipt of that letter, we arranged  
6 special circumstances and sent them an  
7 express payment overnight. It is my  
8 understanding that Alabama has a protection  
9 factor in there that allowed us to send  
10 that check overnight, and they would  
11 continue our coverage. I'm not sure of the  
12 exact -- how all that works. But when we  
13 discovered the notice and we made the --  
14 contacted them, they assured us. They  
15 mandated that we catch the arrears payment  
16 that had been collecting up front, so we  
17 had to pay two payments immediately in  
18 overnight payment.

19 Q. Was Lisa McNamee ever terminated?

20 A. No.

21 Q. Did she leave the employ of Amtren at some  
22 point?

23 A. Yes.

1 MR. TRAWICK: I'll be happy to do  
2 that. I have a couple of  
3 questions.

4 EXAMINATION

5 BY MR. TRAWICK:

6 Q. Lisa McNamee is obviously female; is that  
7 correct?

8 A. That's correct.

9 Q. And what is her race or ethnicity? Is she  
10 Korean?

11 A. She's Korean.

12 Q. And Susan Seeber. Susan's obviously a  
13 female?

14 A. That's correct.

15 Q. And I believe you hired Lisa and Susan; is  
16 that correct?

17 A. That's correct.

18 Q. The females that currently work at Amtren,  
19 did you hire them? And I'm talking about  
20 full time.

21 A. Yes. Full time, yes. If I didn't hire, I  
22 was in on the hiring process definitely and  
23 on the approval process, yes.

1 Q. Is it a fair statement that you could have  
2 said no --

3 A. Exactly.

4 Q. -- on hiring any of the females who  
5 currently work there?

6 A. That's correct.

7 Q. In the case of Lisa McNamee, did she get  
8 additional duties after Ms. McCollum was  
9 terminated and after you had a chance to  
10 evaluate her job performance?

11 A. Yes. She basically performed the role of  
12 the accounting person for several weeks,  
13 and then her ability -- it was apparent  
14 that she could move further in the role,  
15 and so we moved her into the role of  
16 accounting manager after observing her  
17 efforts during this period after  
18 Ms. McCollum was terminated.

19 Q. In fact, I think you gave Ms. McNamee a  
20 raise after you had an opportunity to  
21 evaluate her job performance in her new  
22 role; is that correct?

23 A. That's correct.

1 Q. Has Susan received a raise since she's been  
2 employed?

3 A. Yes. She -- I think her starting pay was  
4 around 40,000, and she's subsequently at  
5 50,000 per year now.

6 Q. Let me ask you about this cancellation of  
7 Amtren's credit card processor. You were  
8 present during Ms. McCollum's deposition,  
9 correct?

10 A. Yes, sir.

11 Q. Ms. McCollum seems to blame that on you.  
12 Do you recall that testimony?

13 A. Yes.

14 Q. Tell me about how Amtren's credit card  
15 processor got canceled.

16 A. The merchant agreement account was  
17 terminated over lack of payment of \$118. I  
18 can't remember the exact amount.

19 The notification was submitted to  
20 Amtren. I had never been made aware of  
21 that notification. There is, apparently, a  
22 time frame to respond to it. We missed  
23 that time frame, and Chase Manhattan

1           that we were pursuing other credit card  
2           accounts, so I was unaware of the  
3           termination.

4       Q.   Ms. McCollum testified or refused to admit  
5           that this is a significant problem for  
6           Amtren. How would you characterize this  
7           problem?

8       A.   It is significant, because every item that  
9           we sell on the Internet is sold by credit  
10          card. Every purchase, every spare part has  
11          to be sold by credit card. In our sales  
12          methods of today, I would say credit cards  
13          probably would achieve, you know, a quarter  
14          of our sales. We subsequently have to use  
15          third-party companies to do this now, you  
16          know, at a higher rate of commission, I  
17          guess, to the merchant account.

18      Q.   Ms. McCollum also in her testimony seemed  
19           to blame you for the fact that Chase  
20           Merchant Services could not deduct this  
21           \$118.41 from your bank account. Is that  
22           correct?

23      A.   No, that's not correct. That's not



1 correct. I was unaware of any errors in  
2 back charging by Chase. The separation of  
3 accounts that Ms. McCollum had testified  
4 where we had separated our accounts --  
5 Chase Manhattan has an account they can  
6 sweep -- apparently, they can deduct money  
7 from once they deposit. I was aware we did  
8 separate the accounts. I was not aware we  
9 did not manage the dollar amount in those  
10 accounts to sufficiently satisfy any back  
11 charges being generated by Chase  
12 Manhattan.

13 Any time a back charge is initiated, a  
14 paper document is mailed to the company.  
15 There is, I guess, a time frame there that  
16 you can respond to the -- that -- you know,  
17 the fact that they couldn't back charge. I  
18 guess it would be a -- miss a payment.

19 Q. Was it Ms. McCollum's responsibility to  
20 insure that this kind of problem didn't  
21 happen?

22 A. Yes. In her role, she would have been  
23 responsible to make sure there was timely

1 payment of the back charges.

2 Q. Would notices to the company have gone to  
3 Ms. McCollum?

4 A. No. The notice -- at that time, the notice  
5 went to Mr. Fields.

6 Q. Okay.

7 A. Actually, let me clarify that. The notice  
8 was directed to her by matter of her  
9 responsibility. It wasn't addressed to  
10 her. Yes, all notices went to her, but  
11 this notice -- this subsequent notice was  
12 not addressed to her.

13 Q. Okay. I believe Ms. McCollum testified in  
14 her deposition she couldn't refute  
15 testimony that she received this notice.  
16 It's your understanding that she did  
17 receive this notice; is that correct?

18 A. Yes.

19 Q. Did she deny receiving this notice when you  
20 talked with her about it?

21 A. I'm not sure. I don't think I discussed it  
22 with her. I didn't discuss it with her.  
23 At that time, we were unaware of the

1 magnitude of it. We were aware that we  
2 had -- the account had terminated, but we  
3 had not discovered that document that we  
4 later showed.

5 Q. But it was Ms. McCollum's responsibility to  
6 insure that there were sufficient funds in  
7 Amtren's accounts so that this problem  
8 would not have happened; is that right?

9 A. Right. Separation of the accounts is her  
10 responsibility to manage the funds.

11 Q. Would it have been her responsibility to  
12 know which bank accounts Chase Merchant  
13 Services would have attempted to deduct  
14 this from?

15 A. Yes.

16 Q. I want to direct your attention to  
17 Plaintiff's Exhibit 2, page two,  
18 paragraph -- or item number one. This  
19 document states that Amtren suffered  
20 penalties of \$3,008.66. Is that what the  
21 document states?

22 A. Yes.

23 Q. And is it correct that these penalties were

1 Q. I believe in Ms. McCollum's deposition, she  
2 testified she could not recall if she was  
3 present during management meetings where  
4 this issue was discussed. Was Ms. McCollum  
5 present when these issues with Plextor were  
6 discussed?

7 A. Yes.

8 Q. And were they discussed with her?

9 A. Yes.

10 Q. Tell me about the company name Padus,  
11 P-A-D-U-S.

12 A. Padus is a critical vendor for us. y □□□  
13 make the software tool kit we use. It's an  
14 imbedded portion of our product. They have  
15 been a major part of our company since the  
16 beginning. We selected -- their software  
17 and the software they generate that's  
18 inside our software has provided tremendous  
19 benefits because of the technology.

20 Q. I believe Ms. McCollum testified in her  
21 deposition that it was her responsibility  
22 to insure that Padus was timely paid. Is  
23 that correct?

1 maybe at the end of 2004, our line of  
2 credit was -- in fact, I don't think we had  
3 much money borrowed on our line of credit,  
4 and we had sufficient cash. During the  
5 periods of November, December, January,  
6 February, March -- December of '04 and  
7 January, February, March '05, the moneys  
8 were basically expended and our line of  
9 credit was drawn on maximum. In fact, upon  
10 Ms. McCollum's departure, I had to seek  
11 immediate -- an immediate loan of \$200,000  
12 to pay down the vendors that had been aged  
13 out, you know, aged out meaning that had  
14 been -- that hadn't been paid. I'm not  
15 sure of the exact amount. I believe it was  
16 about 200,000, because the credit -- they  
17 were basically one by one threatening to  
18 cut off our credit.

19 Q. Is it correct that Padus is an important  
20 vendor that Amtren buys things from?

21 A. The loss of the license from Padus would  
22 shut us down because what we would have to  
23 do is -- there's no quick way to engineer

1 another software package. You would  
2 literally be -- if they terminated their  
3 license, we would have to stop shipping  
4 product immediately.

5 Q. So is it fair to say that it was essential  
6 for Amtren's continued operation to keep  
7 Padus paid timely and keep them happy?

8 A. Absolutely. Unlike other items that you  
9 ship, you can -- materials are yours and  
10 you can ship, when there's a license  
11 involved, upon notice that a license is  
12 terminated, you can no longer ship your  
13 product.

14 MR. TRAWICK: I think that's all I  
15 have.

16  
17 \* \* \* \* \*

18 FURTHER DEPONENT SAITH NOT

19 \* \* \* \* \*

20

21

22

23